

## Department of Energy

## §711.12

(b) Behavior and conditions that could indicate unsuitability for the PAP include, but are not limited to, the following:

(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorder;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to understand work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism; and

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

### §711.10 Individual reporting.

(a) An individual in the PAP shall report any observed or reported behavior or condition of another PAP individual that could indicate the individual's unsuitability for nuclear explosive duties, including the behaviors and conditions listed in §711.9, to a supervisor, the SOMD, or other PAP official.

(b) An individual in the PAP shall report any behavior or condition, including any behavior or condition listed in §711.9, that may affect his or her own suitability for nuclear explosive duties to a supervisor, the SOMD, or other PAP official.

### §711.11 Immediate removal from nuclear explosive duties.

(a) A supervisor who has a reasonable belief that an individual in the PAP is not suitable for nuclear explosive duties shall immediately remove that in-

dividual from those duties pending a determination of the individual's suitability. The supervisor shall, at a minimum:

(1) Require the individual to stop performing nuclear explosive duties;

(2) Take action to ensure the individual is denied access to nuclear explosive areas; and

(3) Notify the individual, in writing, the reason for these actions.

(b) A supervisor who removes an individual from nuclear explosive duties shall notify the PAP certifying official of the action and the reasons that led to the removal of the individual from nuclear explosive duties as soon as possible, and shall forward this information, in writing, to the PAP certifying official within 24 hours from the time the individual is removed from duties.

(c) Immediate removal of an individual from nuclear explosive duties is an interim, precautionary action and does not constitute a determination that the individual is not fit for nuclear explosive duties. Removal from nuclear explosive duties shall not, in itself, be cause for loss of pay or other benefits or other changes in employment status.

### §711.12 Action following removal from duties.

(a) *Temporary removal.* If a PAP certifying official receives a supervisor's written notice of the immediate removal of an individual from nuclear explosive duties, the certifying official shall direct the removal of the individual from PAP duties pending an evaluation and determination regarding the individual's suitability for nuclear explosive duties. The applicable DOE personnel security office shall be notified if removal is based on a security concern.

(b) *Evaluation.* The PAP certifying official shall conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from nuclear explosive duties. The PAP certifying official shall prepare a written report of the evaluation that includes the certifying official's determination regarding the individual's suitability for continuing PAP certification.

(c) *PAP certifying official's action.* (1) If the PAP certifying official determines that an individual who has been removed temporarily from nuclear explosive duties continues to meet the requirements for certification in the PAP, the certifying official shall:

(i) Notify the operations office manager of the determination; and

(ii) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to nuclear explosive duties.

(2) If the PAP certifying official determines that an individual who has been temporarily removed from PAP duties does not meet the requirements for certification, the certifying official shall refer the matter to the operations office manager for action. The certifying official shall submit the evaluation report to the operations office manager and a recommendation that the individual's PAP certification be revoked.

(d) *Operations office manager's initial decision.* After receipt of a PAP certifying official's evaluation report and recommendation for revoking an individual's PAP certification, the operations office manager shall take one of the following actions:

(1) Direct that the individual be reinstated in the PAP and, in writing, explain the reasons and factual basis for the action;

(2) Direct the revocation of the individual's PAP certification and, in writing, explain the reasons and factual basis for the decision; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, security evaluation, treatment) to resolve the concerns about the individual's suitability for the PAP.

(e) In the event of a revocation, pursuant to §711.12(d)(2), or suspension pursuant to §711.12(d)(3), the operations office manager shall provide the individual a copy of the PAP certifying official's evaluation report. The manager may withhold such report, or portions thereof, to the extent that he/she determines that the report, or portions thereof, may be exempt from access by the individual under the Privacy Act or the Freedom of Information Act.

(f) *Reinstatement after completion of specified actions.* An individual directed by the operations office manager to take specified actions to resolve PAP concerns shall be reevaluated by the certifying official after those actions have been completed. After considering the PAP certifying official's evaluation report and recommendation, the operations office manager shall direct either:

(1) Reinstatement of the individual in the PAP; or

(2) Revocation of the individual's PAP certification.

(g) *Notification of operations office manager's initial decision.* The operations office manager shall send by certified mail, return receipt requested, a written decision, including rationale, to an individual who is denied certification or recertification. The operations office manager's decision shall be accompanied by notification to the individual, in writing, of the procedures in paragraph (g) of this section and §§711.14–711.16 pertaining to reconsideration or a hearing on the operation office manager's decision.

(h) *Request for reconsideration or certification review hearing.* An individual who receives notification of an operation office manager's decision to deny or revoke his or her PAP certification may choose one of the following options:

(1) Take no action;

(2) Submit a written request to the operations office manager for reconsideration of the decision to deny or revoke certification. The request shall include the individual's response to any information that gave rise to a concern about the individual's suitability for nuclear explosive duties. The statement shall be signed under oath or affirmation before a notary public, and must be sent by certified mail to the operations office manager within 20 working days after the individual received notice of the operations office manager's decision; or

(3) Submit a written request to the operations office manager for a certification review hearing. The request for a hearing must be sent by certified mail to the operations office manager

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within 20 working days after the individual receives notice of the operations office manager's decision.

(i) *Operations office manager's decision after reconsideration or hearing.* (1) If an individual requests reconsideration by the operations office manager but not a certification review hearing, the operations office manager shall, within 20 working days after receipt of the individual's request, send by certified mail, return receipt requested, to the individual a final decision as to suitability based upon the individual's response and other relevant information available to the operations office manager.

(2) If an individual requests a certification review hearing, the operations office manager shall decide the matter after receipt of the certification review hearing officer's report and recommendation, as provided in §711.15. The operations office manager shall, within 20 working days after receiving the hearing officer's report and recommendation, send by certified mail, return receipt requested, the operations office manager's final decision to the individual, accompanied by a copy of the hearing officer's report and recommendation, and the transcript of the certification review proceedings.

### **§711.13 Appointment of a certification review hearing officer and legal counsel.**

(a) After receiving an individual's request for a certification review hearing, the operations office manager shall promptly appoint a certification review hearing officer. The hearing officer shall:

(1) Be a DOE attorney or a hearing official from the DOE Office of Hearings and Appeals and have a DOE Q access authorization; and

(2) Have no prior involvement in the matter or be directly supervised by any person who is involved in the matter.

(b) The operations office manager shall also appoint a DOE attorney as counsel for DOE, who shall assist the hearing officer by:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance of the hearing, of the scheduled place, date, and hour where the hearing will take place.

### **§711.14 Certification review hearing.**

(a) The certification review hearing officer shall conduct the proceedings in an orderly and impartial manner to protect the interests of both the Government and the individual.

(b) An individual who requests a certification review hearing shall have the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and be accompanied and represented at the hearing by counsel of the individual's choosing or any other person and at the individual's own expense.

(c) In conducting the proceedings, the certification review hearing officer shall:

(1) Receive all information relating to the individual's fitness for PAP certification through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and except as provided in paragraph (c)(3) of this section, cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel security file and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and that the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel security file and the Assistant